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The Outsourcing of Control: Alcohol Law Enforcement, Private Sector Governance and the Evening and Night-Time Economy.

Introduction

The study of alcohol supply and consumption is unavoidably and challengingly interdisciplinary. In the field of alcohol policy and public health some researchers have called for a renewed focus on the role of corporate actors as a result of recent policy developments which appear to support vested commercial interests (Hawkins, et al., 2012). We suggest that a similar and overlapping research agenda is required to explore how corporate actors within the alcohol industry are helping shape urban place management after dark. One of the authors has proposed a typology of Evening and Night-time Economy (ENTE) governance characterized by the assemblage of four overlapping modes: Type 1. law, statute and urban design; Type 2. police governance; Type 3. the private governance of affect; and Type 4. informal governance (Hadfield, forthcoming). What, however, are the social implications of different modes becoming variously influential in driving cultural and economic change within the ENTE? What is the appropriate balance between modes so as to achieve 'town centres for all'? Our analysis here affords insight into what we believe are important changes occurring in England and Wales, and more recently, across the UK, that deepen and entrench Type 3 private governmental modes at the expense of publically accountable Type 1 and 2 modalities. These changes have occurred as a result of corporate interests 'stepping in' to meet self-identified needs for voluntary schemes and organizational structures that enhance 'partnership working' between regulator and regulated; an approach endorsed by central government in a period of public sector retrenchment.

Exploring the drivers and potential ramifications of this 'outsourcing of control', this article draws from the findings of two empirical research studies. We examine how a vacuum in the delivery of traditional alcohol law enforcement is being filled by a Corporate Social Responsibility (CSR) agenda that lauds the status of ENTE businesses and drinks manufacturers in projects of urban governance, favouring a co-operative stance to legal compliance with alcohol licensing laws through demonstrated acts of self-regulation and 'responsibilisation' (Garland, 1996). We do not wish to deny that alcohol manufacturers and retailers are key stakeholders in the governance of drinking; controlling, as they do, the supply, development and marketing of alcoholic products. Our concern is to question the extent to which business interests should exert influence over the means by which their own trading environment and practices are regulated, such that law enforcement activities continue to support statutory intentions and the public good.

In England and Wales attempts to transform negative public images of the ENTE may be linked to the widespread policy transfer of branded 'kite-marking awards' initiatives: prominently 'Purple Flag' (main sponsor drinks manufacturing multinational, Diageo) and 'Best Bar None' (Bacardi Brown-

Forman Brands, Diageo, Heineken and Molson Coors). The Best Bar None and Purple Flag schemes are constituents of the Social Responsibility Alliance (SRA) a forum for collaboration between the key alcohol industry CSR initiatives. Both schemes link the ever-present 'community safety' agenda to a specified programme of local action, wherein town and city centres are rendered 'safer' and 'more welcoming' by choosing 'options' from a list of performance targets ('metrics'). For licensed venues, attainment of membership 'awards' then becomes a bargaining tool in dealings with public licensing and enforcement agents. For public agencies their role in supporting the establishment of such schemes helps foster the impression that "something is being done" in their communications with local constituencies.

The rise of 'self-regulation through partnership' and kite-marking schemes for the ENTE in England and Wales has occurred over the last decade alongside and arguably as a result of, the introduction of many new laws and initiatives around public disorder associated with alcohol, and the responsible sale of alcohol (Hadfield et al., 2009a, Hadfield and Measham, 2009). This article draws from research conducted by the authors in 2008 (Home Office/KPMG LLP, 2008) and 2010/11 (Hadfield and Measham, 2011). Our empirical focus is on alcohol law enforcement/implementation within the official remit of The Licensing Act 2003 (LA2003) and its four Statutory Objectives: the prevention of crime and disorder, the prevention of public nuisance, the promotion of public safety, and the protection of children from harm. These objectives structure the working practices of all those who operate and/or police and regulate licensed businesses in England and Wales.

Our findings are considered in the light of subsequent developments in alcohol licensing law and alcohol law enforcement under the Coalition Government, tracing the trajectory of important aspects of ENTE governance and urban place management in England and Wales and subsequently the UK. The issues arising encompass the quality of life and accessibility concerns of many debates in urban research and planning such as the social functions of the night-time city, place building and place management as well as those of legal compliance and public health within a consumer market.

Policy Context of the Research

Initial readings of the amendments to alcohol licensing law introduced by the Coalition Government offer *prima facie* impressions of a more restrictive enforcement agenda than that pursued by the previous Labour administrations; a process which one legal commentator has described as "legislative repentance" (Light, 2010: 305), or what was officially heralded as a process of "re-balancing" (Home Office, 2010). However, attention to the outcomes and processes of alcohol law implementation (Humphreys and Eisner, 2010, Newton, et al., 2008) produces a more ambiguous picture to the impressions of 'getting tough' espoused in the statutory projects of both Labour and Coalition.

Questions have been raised as to the extent to which central government has focused upon the introduction of new legislation at the expense of ensuring that sufficient attention and funding is directed toward the enforcement of existing laws (WSTA, 2008). As the Department of Culture, Media and Sport (DCMS) 'Evaluation of the Impact of the Licensing Act 2003' (2008: 7) concedes:

"Our main conclusion is that people (consumers and businesses) are using the freedoms, but people (public sector agents) are not sufficiently using the considerable powers granted by the Act to tackle problems, and that there is a need to rebalance action towards enforcement and crack down on irresponsible behaviour."

The Crime Survey for England and Wales (CSEW) shows the proportion of all self-reported violent crimes (all categories) occurring in or near a pub or club has remained within a narrow range of around a fifth (17-22%) across the years 2003-4 to 2011-12 (ONS, 2013a). For the most recent published year 2011-12, the figure was 20%, with 32% of incidents involving 'Wounding' (the highest figures recorded for this category over the 2003-12 period). 'Assault with Minor Injury' in or near a pub or club has seen a recorded increase from 2008-09 onwards, with a quarter of incidents recorded as such for 2011-12.

These statistics may be read against the backdrop of a flurry of legislative initiatives over the same decade - most prominently the LA2003 implemented in November 2005 - which have increased the range and strengthened the powers of police and local licensing authorities to act in furtherance of the alcohol-related harm prevention, reduction and minimization agendas (see Hadfield et al., 2009a). A basic *prima facie* correlation of the legislative activity and official crime statistics would suggest that these initiatives have had little effect (see also Humphreys and Eisner, 2014) with the apparent lack of progress also occurring alongside population-level declines for 2005-12 - as recorded by the Office for National Statistics (ONS, 2013b) - in the proportion of adults (aged 16 and over) who drank alcohol in the week before being interviewed, which fell from 72% to 64% for men and 57%-52% for women in Great Britain (England, Wales, Scotland and Northern Ireland) during this period, with the largest falls amongst 16-25 year olds. It is not known to what extent these population-level statistics indicating a general decline in alcohol consumption are reflected in the drinking behaviours of regular ENTE attendees. Local case studies have shown ENTE patrons to consume at levels significantly above those of the general population of their age and gender, whilst the general population contains increasing numbers of abstainers. For example in Lancashire, surveys of ENTE customers by Measham et al., (2011) found that young women and men each drank an average of 12 and 14 units respectively on a night out, approximately three times that recommended by national health bodies. However, in the absence of longitudinal ENTE-specific local and national drinking behaviour surveys it is not possible to draw conclusions as to any fluctuations in ENTE alcohol consumption nationally and how these may relate to the broadly static levels of violent crime occurring in or near a pub or club, as traced in CSEW self-reporting.

Over the last decade, alcohol law enforcement activity in England and Wales has been characterized by short-term high profile police campaigns heralded with advance warning to alcohol retailers. These have, for example, targeted crime and disorder (The Alcohol Misuse Enforcement Campaigns (AMECs) of 2004-07) and the 'unlawful supply' of alcohol by licensed premises (Tackling Underage Sales of Alcohol Campaign (TUSAC) and Responsible Alcohol Sales Campaign (RASC) of 2007) or some combination of both these objectives. The focus of most enforcement has been on 'poorly managed premises' that are 'known' to be associated with alcohol-related crime and disorder to check compliance with the law ('bad apples').

Evidence would suggest that enforcement action in combination with drinks retailers' initiatives such as 'Challenge 21' have had some impact in relation to the offence of sales, or allowing sales of alcohol to a person under 18 (LA2003 s146/7). Under the Penalty Notice for Disorder (PND) scheme introduced in November 2004, fixed penalty notices of £90 (formerly £80) may be issued by the police for the offence of 'sale of alcohol to those aged under 18'. Latest published figures covering the period of June 2004 to June 2012 show the number of PNDs issued for this offence in England and Wales as 417 for the 12 months ending June 2005, increasing markedly to 3402 in 2006 and peaking at 3480 in 2007, before gradually falling back to 1417 by 2012 (Ministry of Justice, 2012). PNDs for the 'lower tier offence' (£60 fine) of 'allowing consumption of alcohol by a person under 18 years on relevant premises' fell from 25 instances in June 2012 to one instance in 2012.

To knowingly 'sell or attempt to sell alcohol to a person who is drunk' is an offence under s141 of the LA2003 - punishable on conviction by a fine of up to £1,000, although more often involving a PND fine of up to £90 imposed on bar staff, whilst 'knowingly...obtaining alcohol for a person who is drunk' is an offence under s142 of the same legislation. Figures presented by a Home Office spokesperson (Hardy, 2014) indicate the extent of enforcement of s141 as ranging from 3-5 fines per year for 2010-13, with an average for this period of 77 PNDs per annum (see Supplement 1, Table 1). An enquiry by the Wine and Spirit Trade Association (WSTA, 2008:16) reported two convictions in 2006 and one conviction in 2007 for s141 offences and that between November 2005, when the LA2003 came into force, and March 2008, no one had been found guilty, or even proceeded against, for an offence under s142 (Parliamentary Written Answer 180410 19/03/08). These statistics are not generally published so it has not been possible to obtain updated figures.

The Review of a Premises Licence represents an escalation of enforcement action that steps outside of attempts to achieve compliance by informal persuasion. The Home Office estimates that 800 reviews were completed in the year to 31 March 2013, 27% (-300) fewer than the previous year. Of these 574 were on the grounds of 'crime and disorder', 268 were for 'public nuisance', 266 were for 'protection of children', and 165 were for 'public safety'. The police were the main Responsible Authority, instigating 59% (460) of the total number of Reviews, with Trading Standards being the second

most common Responsible Authority, instigating 21% (165). Environmental Health Officers and local residents instigated 9% (70) and 6% (47) respectively. Regarding the action (or actions) taken following Reviews, the majority (471) resulted in Conditions or modifications being added to the licence, 150 resulted in licence revocation and 98 resulted in a licence being suspended. No action was taken following 58 reviews (Home Office, 2003a).

In relation to public drinking more generally, in 2011-2 'Drunk and Disorderly' offences accounted for 40% of all PNDs issued, comprising the largest single category of PND usage (Ministry of Justice, *ibid.*). However, although known as 'on-the-spot-fines' and designed to reduce police bureaucracy, PNDs have always missed the mark in terms of their potential to assist the street-level policing of the ENTE, official guidance stating that: "a penalty notice will not be appropriate where the constable has reason to believe that the person is impaired by the influence of drugs or alcohol" (Home Office, 2013b: 3.52).

The Accumulation of 'Invisible Powers'?

In a previous study of enforcement practices one of the authors reported how a particularly controversial power, the Alcohol Disorder Zone (ADZ), introduced by the Labour Administration in June 2008 had so far gone unused (Hadfield et al., 2009a). This unpopular power was removed from Statute by the Coalition in 2010 and replaced in October 2012 by two new, though similar, enforcement options: The Late-Night Levy (LNL) and the Early Morning Restriction Order (EMRO). Like the ADZ these powers have proved controversial as a result of their mandatory intervention in the alcohol sales market and the regulatory designation of specific tracts of urban space (and time), either through the imposition of a fee charged to licensed premises for the cost of additional policing (LNL), or in the case of EMROs, the complete cessation of alcohol sales within a designated area, beyond a certain time. As with ADZs, accompanying Home Office guidance to the legislation frames the creation of EMROs as actions of 'last resort', to be used only where other remedies have failed (Home Office, 2014).

A survey of 99% of local authorities in England and Wales (363 in total) by specialist licensing solicitors Polleston Allen (2012) found that just over 6% of councils said they would consider introducing a LNL and 8.7% said they were considering an EMRO. The remaining respondent authorities had no plans to adopt either power. Reasons stated for reluctance to use the powers ranged from insufficient expected revenue from the LNL, to legal concerns over being the first to implement new legislation, damage to area reputation, and financial impacts on local businesses. During 2013/14 a number of these towns and cities held consultations on the introduction of LNLs and EMROs but decided against their adoption. At the time of writing (September 2014) four local authorities had adopted the Levy (Newcastle-upon-Tyne, Cheltenham, Nottingham and the London Borough of Islington) to be applied only to those premises licensed to sell alcohol between 00:01 and 06:00.

There are currently no EMROs. Only five towns and cities have expressed interest in the power. In early-2014 EMRO proposals received detailed consideration at 4-day committee hearings held in Blackpool and the London Borough of Lambeth, facing fierce opposition from local alcohol retailers, backed by their national trade organizations. Both authorities decided to reject the measure, with Lambeth councilors quoted in media reports as saying the powers were poorly drafted and not 'fit-for-purpose'. It appears that history has repeated itself and the EMRO has followed the fate of the ADZ.

Other 'invisible powers', prominent by omission from the practical enforcement repertoire have been highlighted by Light (2010) who identifies in the LA2003 (as amended) and its accompanying guidance (Home Office, 2013b: 68-71) powers based on concepts such as 'High Volume Vertical Drinking' (HVVD) and 'Irresponsible Drinks Promotion'. These powers are of such ill-defined nature as to have been ignored by enforcement practitioners on legal advice that they are incapable of withstanding detailed scrutiny in the case of an Appeal and therefore remaining almost wholly used.

Aims and Objectives of our Research on Alcohol Law Enforcement

These statistical trends and chains of events have, over time, indicated a pattern of ill-conception, inconsistency and oversight with regard to the operation of Type 1 and 2 public governmental modalities, whilst saying little about the contributory roles of private actors in Type 3. A research objective thus arose to explore any barriers preventing effective law enforcement and legal compliance within the everyday practices of leisure venues, local government, criminal justice agencies and other regulatory authorities within multi-agency networks. The aim of our research was to empirically investigate legislative and CSR implementation as applied to public drinking spaces and the operation of licensed premises. This, we hoped, would allow insight into how various modes of governance operated upon and across the ENTE, as well as how modes of governance emanating from stakeholders within this economy might exert influence over broader urban politics and policy agendas.

In Study 1 our interviews explored clarification and understanding of the current regulatory regime, its scope and the various contributions of different agencies and groups; collaborations and tensions between stakeholders and their effects upon enforcement; the extent to which existing laws and regulations were enforced and regarded as useful, appropriate and proportionate; an assessment of needs in relation to improving the efficacy of then-current enforcement options and in relation to any future amendments to the enforcement regime; and the role of 'the regulated' and ways in which

businesses might be better supported in achieving compliance.

In Study 2 our aim was to record the standards of operation of licensed premises trading within the ENTE and to compare these activities with those to which drinks manufacturers and retailers had committed within a published voluntary code of practice (WSTA et al., 2005) which the drinks industry had itself devised. The research instrument was designed to measure compliance with each of the commitments that had been made within the voluntary code.

Research Design and Methodologies

Both projects were commissioned by stakeholder organizations with a loose set of outline concerns they wished to be investigated. Study 1 was commissioned by The Portman Group, a not-for-profit organisation funded by nine drinks production companies with the remit of promoting social responsibility through the actions of member companies. This study involved semi-structured interview and documentary-based methods. An interview schedule (see Supplement 2) was sent with a letter of introduction in advance of face-to-face meetings. Interviewees were asked to comment on the application of a range of statutory powers categorised as Person-based, Place-based and Venue-based. This list of powers was developed from that used in an earlier study of national alcohol policy (Hadfield et al., 2009a: 469) and adapted to reflect the legislative environment in 2010/11. The study also included questions as to the operational effectiveness of CSR schemes.

The authors selected a purposive sample of 40 ENTE informants and representatives of major stakeholder groups from across England and Wales (see Supplement 3). Local feelings were often idiosyncratic and sometimes forcefully expressed, underlining the need to respect assurances of confidentiality, thus all references to identifiable persons and places have been removed.

In Study 2, the Home Office required a 'Review of the Social Responsibility Standards for the Production and Supply of Alcohol Drinks' (SRS). The SRS relied on the assumed effectiveness of point-of-sale inducements to drink without taking into account aspects of consumer context or desire. The Review took these assumptions at face value and sought to assess the extent of implementation of the SRS rather than questioning their underlying principles. A research team, led by the authors, planned and conducted observational fieldwork in licensed premises across eight English regions as part of a broader investigation conducted by KPMG. The locations were: Coventry; Hackney; Harrogate; Manchester; North Norfolk; North Tyneside; Restormel (Newquay); and Swindon and the research was conducted across each local authority district, including urban central, suburban and semi-rural locations. To assess how the SRS were working in practice in each location a

team of six researchers and an observation lead carried out a series of covert observations across the local alcohol retail industry over a period of five days (Thursday to Monday) 9pm-5am, or half an hour after closing time dispersal. The teams conducted 726 visits across the eight locations. Some premises were visited more than once. The total number of premises visited was 597, 70% (n=414) of which were on-trade ENTE premises and 30% (n=183) being off-trade premises, such as shops and supermarkets.

Observation and recording was conducted according to explicit rules in order to reduce researcher bias and improve the consistency of data collection across the teams. We utilized an existing instrument known as the 'Training Manual for Observers on the Safer Bars Study' developed by Graham (2000). Permission for use of the instrument had previously been obtained for a study of Glasgow pubs (Forsyth, et al., 2005). The instrument was further adapted into a 15-page document by the authors upon authorization from Graham and Forsyth and is available to open access on-line in Home Office / KPMG (2008, Vol. 3: 52-66).

Researchers were trained in the assessment of drunkenness, following established guidance. In support of the RASC campaign the Home Office provided national briefing notes to police officers on how to identify a person who is drunk, through aspects of their comportment including: "rambling conversation", "an unkempt appearance", "being careless with money", "spilling drinks", "fumbling for cigarettes" and "bumping into furniture" (Slade, 2007: 5). In addition, epidemiological research reports a high degree of correspondence between Blood Alcohol Concentration, as an objective measure of intoxication, and subjective ratings of its physical manifestations (slurred speech, staggering gait and glazed eyes) when conducted by trained researchers in naturally occurring nightlife settings (Perham et al., 2007). A further issue was that of assessing the age of drinkers within the venues. Researchers were asked to record only those instances in which they assessed that the customers were unambiguously below the age of 18 years. Working through photo-elicited examples formed part of the researcher training, similar to server training in licensed premises. Nonetheless, our results may not be without error in this regard. As many venues themselves did not comprehensively check customer ages, we believe our results are indicative of compliance with the SRS in this regard.

Our work was supported by our research partners KPMG who conducted semi-structured interviews with the 16 signatories to the SRS, together with industry and non-industry stakeholders in each of the eight locations. The views of industry and non-industry interviewees as expressed to KPMG were typical of generally bipartite debates on alcohol, its place in society and effective regulation. Industry commentators typically supported voluntary codes, self-regulation, partnership working and stressed the need for public health education and personal responsibility by consumers. Non-industry interviewees were generally skeptical with regard to these approaches and accorded successes as being driven by public sector initiatives and legislative interventions (Home Office/KPMG, 2008). Our observational studies were, by exploring compliance with the SRS in naturally occurring ENTE environments,

intended as a counter-balance to the rehearsing of entrenched positions, reporting as objectively as possible on the observable evidence as to retailer and consumer behaviours. The purpose of our research was not to 'catch businesses out', but rather to report upon compliance with the SRS (and the law) in the public interest.

Research activity and funding concerning the governance of drinking spaces is fragmented as a result of the multiplicity of overlapping jurisdictions, frames of reference, rights and responsibilities (Hadfield, 2006). Neither the Home Office nor The Portman Group sought direction over our research design or dissemination (see Conflict of Interest Statement). This article draws not only from the two studies described, but also from broader fragments of our sustained personal research programmes. Our objective is to present a view of current governmental modes with regard to UK urban night spaces that is informed by an awareness of competing interests and the constantly politicized (and often litigious) nature of debates in the alcohol regulatory field.

Findings

Study 1

Our international literature review indicated that alcohol harm reduction initiatives had most effect when embedded within sustained local multi-component programmes (MCPs) that drew upon a wider pool of knowledge, skills and resources than that of UK-style statutory 'crime reduction partnerships'. Each MCP partner would need to reflect upon the capacities and resources at their disposal and establish clear procedures for how co-operative work might proceed. For example, despite many areas supporting the 'Cardiff Model' (Shepherd, 2007) of data sharing between hospital Accident and Emergency Departments and Community Safety agents, interviewees expressed the view that setting up working protocols of this kind were an ongoing challenge. Although some national multiple retailers bemoaned the variety of local interpretations of the licensing laws which were seen as a drain on their staff training and legal resources, much of our data pointed to the inevitability and desirability of 'local cultures of regulation'. Our previous research had highlighted the importance of key personnel acting as 'champions' for particular local issues (Hadfield et al., 2009a).

Policy initiatives around alcohol law enforcement at the local and national levels had rarely been subject to formal evaluation. National enforcement campaigns which had ring-fenced funding and centrally-defined objectives were criticized, both for their short-termism and the capacity to ride roughshod over locally devised and approved ways of working. In accordance with the paradigmatic model of 'responsive regulation' (Ayers and Braithwaite, 1992) a "stepped approach to achieving compliance" (Home Office/loS, 2012) was preferred wherein businesses were offered warnings and advice on committing to an 'action plan' and only if this approach failed were they

subject to more formal Review proceedings.

Conditions attached to the Premises Licence were an area of tension between regulators and the regulated, particularly the degree to which managers and staff working in licensed premises adhered to, or even had knowledge of, the Conditions attached to their Licence. Were they, for example, compliant with the national Mandatory Conditions on all licences, which from 2010 onwards, included the requirement to offer and advertise small measures of wine and spirits? The purpose of this law has been to avoid unmeasured free-pouring and the selling of double shots of spirits and larger glasses of wine as standard drinks; all common practices in the UK “culture of intoxication” of the 2000s (Measham and Brain, 2005).

In general, our interviewees regarded the prosecution of members of the public for breaches of the LA2003 to be too expensive and time consuming to pursue. There was a perception that the courts would not support such prosecutions, or that the fines imposed would be minimal. Also, the commitment of resources to the surveillance required to obtain the necessary evidence for conviction was seen as disproportionately great.

Overarching powers applied within geographically-defined boundaries, for example, the ability to designate Cumulative Impact Areas, were notably more relevant in large urban areas (Poppleston Allen, 2012). In smaller towns, enforcement activity more often focused on personal relationships between regulator and regulated (in the case of licensed premises) and the police and the policed (in the case of alcohol-related crime and disorder offenders). In the case of police powers applied to the consumers of alcohol in public places, a number of interviewees expressed concern regarding the possibilities for displacement, the tendency to recidivism and the general inability of area- and person-specific powers to address many of the underlying causes of drink-related crime and disorder by directing offenders toward services that might help them address their relationship with alcohol.

The skewing of alcohol policy toward criminal justice concerns and the ‘management of drunkenness’ was widely regarded as an institutionalized failure of the regulatory and enforcement landscape given the omission of any statutory objective relating to public health within the LA2003. From April 2012, the Act was amended to include health bodies as ‘Responsible Authorities’. Such bodies can now have a say in local decisions about alcohol licensing, being able to make representations to the Licensing Authority, including the instigation of Reviews. For more detailed Study 1 findings see Hadfield and Measham (2011).

Study 2

Business practices frequently observed across the 414 ENTE on-licensed premises visited included those that discouraged moderate levels of alcohol

consumption and in many cases actively encouraged drunkenness, such as drinking games, free pouring of wine and spirits, promotion of spirits-based shots and shooters sold as products to “down-in-one”, encouraging customers to ‘double up’ their shots or ‘go large’ on wine glass size when ordering, and general incitement to drink more quickly and to levels of intoxication by bar staff and DJs. We also found advertising involving sexualised imagery on video screens which contravened Para 56.9 of the SRS: “marketing communications must neither link alcohol with seduction, sexual activity or sexual success nor imply that alcohol can enhance attractiveness, masculinity or femininity” (WSTA) et al., 2005); overcrowding, broken glass and spilled alcohol. In some instances there was poor management of customer dispersal at closing time, although there were instances of very good practice. We observed several incidents of crime and disorder (fights and assaults) and public nuisance (urinating, vomiting and criminal damage).

Looking more closely at two particular indicators, the law against serving persons known to be intoxicated and alcohol service / admission of under-18s, we found these to be regularly flouted across all eight locations and all types of on-licence venues. Tables 2-4 in Supplement 1 show our findings in detail. On almost one-in-three of our visits (up to 50% in North Tyneside), perceived intoxicated people were seen to enter licensed premises, in 38% of visits obviously intoxicated customers were served (Table 2) and in 18% of visits obviously underage customers were served (Table 3) whereas in only 8% of visits were requests for proof of age applied (Table 4). Our observers witnessed alcohol sales to blatantly intoxicated people (in some cases, customers who were too drunk to count their money to pay for their drinks being assisted with their purse or wallet by bar staff). Table 2 shows the factors associated with more frequent observations of intoxicated customers being served and Table 3 shows the factors associated with more frequent observations of underage drinkers being served: both relate to similar venue characteristics including cheap drinks, promotional practices, overcrowding, reduced seating and later trading hours.

For researchers, as well as vendors, working in crowded environments with subdued lighting and significant background noise, the opportunity for comprehensive physical assessments of customer intoxication may be limited. Nonetheless, our findings were echoed by Hughes et al., (2014), who drew from a smaller sample of venues in only the North West of England and who used pseudo-intoxicated actors, rather than recording naturally-occurring customer/staff interactions. They used a similar observational instrument to ours, also adapted from Graham (2000). Hughes et al., found that 84% of bar room alcohol purchase attempts by apparently intoxicated customers resulted in sales, rising to 96% beyond midnight. They also found similar venue characteristics associated with higher sales - including reduced seating, cheap alcohol promotions and overcrowding, as well as additionally noise, dirt and bar staff and customers aged mostly under-25 - and that these variables were also significantly associated with each other.

In terms of compliance with the law and CSR we found considerable differences between the eight locations as illustrated in Table 4. For example,

observations of serving intoxicated customers ranged from under a quarter in North Norfolk to over half of visits in North Tyneside. Serving obviously underage customers varied from no observations in Hackney through to one-in-three visits in North Tyneside. Observations of proof of age requests ranged from 1% in North Tyneside through to one-in-five visits in North Cornwall (Restormel).

We concluded that the SRS were not being consistently adopted and applied across the eight locations and that the commercial imperative generally overrode adherence. Normative and socio-economic differences between the various regional environments we encountered may have contributed to this lack of coherence. However, the SRS offered a confusing mix of regulatory and voluntary provisions and had a negligible impact; neither reducing bad practice, nor promoting good practice. Uninitiated readers of the SRS would not have been clear about the distinction between voluntary commitments and statutory requirements, with most of the former provisions simply re-stating the latter. From our research it appeared that both the voluntary and statutory frameworks for governing ENTE spaces were failing to drive good practice. This was due, in part, to the lack of agreed targets or outcomes and an absence of consistent monitoring and enforcement to evaluate progress toward such goals. More detailed quantitative and qualitative findings from the extensive database are provided in Home Office/ KPMG (2008) Vols 1-3.

Mind the Gap, Fill the Vacuum

Our studies of limited enforcement and implementation failure concerning legal instruments for the control of public drinking spaces reveal the context in which new regimes of place management are emerging. Through supportive content in the 'small print' of statutory guidance, Central Government appear happy to delegate a proportion of their role in protecting the public interest to private actors who might previously have been understood, primarily, as the targets of public regulatory intervention. For example, Home Office guidance on the implementation of LNL powers outlines an exemption from the levy for premises which participate in BIDs schemes and a 30% reduction from the levy for premises which participate in "business-led best practice schemes" (Home Office, 2012: 1.34). It is a matter of local discretion for the Licensing Authority as to whether or not these reductions are applied. Nonetheless, the guidance indicates a position of *prima facie* support for CSR schemes from the Home Office; a stance adopted despite little evidence as to the effectiveness of the primary CSR vehicles, beyond that of added value for 'partnership building'.

The Purple Flag programme was developed following research conducted for the Civic Trust (a now defunct NGO) as disseminated in their 'Night Vision' report (Civic Trust, 2006). The scheme is now owned and run by the Association of Town and City Management (ACTM) a mutual organization with a membership that spans the private, public and third sectors. ACTM

activities include resolving environmental, security and place-marketing issues on UK high streets in support of the local retail and leisure offer. The recent rise in prominence of Purple Flag has been dramatic having received Home Office endorsement and a £100,000 three-year investment from drinks manufacturer Diageo in 2010. As of June 2010 nine towns and cities were attached to the scheme, all in England. By the following year, a further seven had adopted Purple Flag, with a Diageo press release announcing an 'awards ceremony' for the addition of nine further areas in November 2011 (Diageo, 2011) making a total of 25. By December 2013, the ACTM were reporting 41 Purple Flag towns and cities across England, Wales, Scotland and Northern Ireland (ACTM, 2013). The current figure, at the time of writing, is understood to be 43. Mark Baird, Head of Industry Affairs and Alcohol Policy at Diageo has commented that the purpose of the scheme is to help: "challenge negative stereotypes that are often associated with urban centres after dark" (ACTM, *ibid*).

In a website post dated 25 June 2010, the promoters of a further prominent CSR initiative, 'Best Bar None' (BBN) explain the history of their accreditation scheme as follows:

"It was felt that in order for progress to be made in delivering a safer night-time economy, a new consensual approach was required to enhance and complement traditional law enforcement activity. The objective of this approach was to provide an incentive for the operators of licensed premises to improve their standards of operation to the level of a commonly agreed national benchmark. A carrot of reward to counterbalance the stick of enforcement" (BBN, 2010).

The origins of BBN date to a pilot award scheme devised by Greater Manchester Police (GMP) in 2003. In 2007 an agreement was reached between GMP, the Home Office and a professional training and accreditation body for licensed retailers, the British Institute of Innkeeping (BII), to develop the scheme nationally. BBN is now sponsored by four major drinks manufacturers and at the time of writing had been adopted by approximately 100 towns and cities across the UK and by four locations in Canada.

CSR schemes have been cited by in-house and industry-commissioned evaluations as helping 'public-private partnerships' increase relations of trust, co-operation, information and knowledge exchange, whilst also offering cost effectiveness and improved public relations (Kenyon, 2012). A fundamental omission in the literature to date (such that a literature exists, it is a non-peer reviewed 'grey' literature), however, is rigorous evidence demonstrating the mechanisms by which CSR schemes and their outcomes are assisting alcohol-related harm reduction as defined and directed by the statutory licensing objectives.

BID schemes with a strong ENTE focus have also emerged in several UK cities, including London, Birmingham and Nottingham. These are locally devised schemes involving licensed retailers rather than drinks manufacturers and do not form part of the branded 'kite-marking' model of transferable CSR.

They do, however, form part of the wider picture of increasing Type 3, private sector responsibility for night-time place management, providing private sector income streams for activities such as private security street patrols, CCTV, enhanced lighting and cleansing and the purchasing of additional police and local council resources in support of their own geographically and temporally-bounded trading environments.

Support for CSR cuts across Central Government policies on alcohol. Both BBN and Purple Flag are listed as 'Community Actions to Tackle Alcohol Harms' as part of the Department of Health 'Responsibility Deal', which seeks pledges of financial and other resources from drinks industry 'partners' in furtherance of public policy goals¹. The Home Secretary (Home Office, 2013c) has "challenged" the alcohol industry to commit further resources to the roll-out of local CSR schemes following the Government's decision to shelve indefinitely the policy of minimum unit pricing for alcohol commended by public health lobbies. A vehicle for further CSR entrenchment has been established in the form of the Local Alcohol Action Area (LAAA) project which offers Government 'help and advice' with local initiatives over a 15-month period, but no additional public funding.

Yet, in order to demonstrate relevance to the public governance of drinking spaces as directed by Type 1 and 2 modalities the effectiveness of these CSR schemes would need to be demonstrated in relation to 'hard' measures such as local crime and disorder statistics. Whilst both schemes claim within their publicity material to achieve success in these criteria (Purple Flag includes Crime and Disorder statistics in its list of 'Key Performance Indicator Metrics') neither scheme provides more than anecdotal supportive evidence. Alternative 'soft' measures of success such as partnership brokerage may assist in easing tensions between disparate public and private agents thrown together by circumstance, but are surely a distraction from the development of the types of evaluated Multi-Component Programmes (MCPs) that might demonstrably support legislative intentions, as applied in other countries such as Sweden and the United States (Babor, et al., 2010).

Not addressed are the issues of piloting and post-hoc evaluation of CSR schemes in order to provide public accountability and explore issues of oversight or omission. We do not know the extents or limits of such schemes' deliverables for the public interest, nor have the numerous local adoptions been subject to consultation with wider urban constituencies, to gather views, amongst other matters, as to the potential for agenda setting by scheme sponsors. Remarkably, this public democratic deficit has not dented the popularity of the branded CSR schemes within the UK policy transfer market. Public monies are scarce and the 'partnership' approach to ENTE governance is in tune with the political zeitgeist; 'solutions' to problems of order maintenance that tap the economic contributions of businesses are seen as 'cost effective'. Moreover, they are communicative acts ('something is being done') and being able to convey some apparently 'good news' about ENTE

¹ <https://responsibilitydeal.dh.gov.uk/pledges/pledge/?pl=7> accessed 22/1/14

governance assists the professional interests of local public and private sector actors alike.

Conclusions

Comparing the results of our empirical research with documentary analysis and the available statistical evidence as to the uptake of alcohol law enforcement powers has led us to believe that implementation is patchy and in many cases deficient, with the words of politicians being at odds with the actions of local practitioners. There may be various reasons for this, ranging from the extent to which some powers are not considered cost effective, or fit-for-purpose, whilst others are considered too difficult to pursue. English and Welsh towns and cities now have a raft of largely untested, unloved and little used powers within their regulatory 'toolkit', a phenomenon also noted in two Australian States (Millar et al., 2012). The implementation deficit, together with poorly drafted legislation, inadequate consultation on legislative change and a general absence of piloting and post-hoc evaluations are, we believe, creating significant obstacles to the pursuit of statutory intentions and ultimately the public good. At the same time, the vacuum created by implementation failure is being filled by more subtle and collaborative negotiations of compliance between regulator and regulated.

Drinks manufacturers' capacity to organize their "industry affairs and alcohol policy" into sustained and coherent national (and international) expertise in lobbying and positioning in response to regulatory restraints has undoubtedly aided their ability to identify and develop CSR schemes. More specifically, branded 'kite-marking' schemes for the ENTE have provided corporate actors with opportunities to fulfill a need arising from the absence of strategic place management roles with local public policy networks and a perennial lack of cash for "traditional law enforcement activity". More broadly, off-the-shelf 'solutions' friendly to the interests of alcohol-led ENTE businesses and the drinks manufacturers who supply them chime with central government aspirations for increased private sector responsabilisation. CSR scheme policy transfers attempt to steer local practice and policy towards an externally imposed template and an agenda that is framed by centralized private sector concerns. The new forms of standardizing private sector influence now pose important challenges to the knowledge base; wherein earlier research had explored the governance of drinking spaces largely through the lens of local public sector actors negotiating their own course through legislative regimes and guidance (Hadfield, et al., 2009b).

A little discussed corollary of these trends is the removal of public accountability mechanisms as operating through the usual channels of local consultation and independent evaluation: a push towards Type 3 private modes of governance and away from Type 1 and 2 public governmental processes (Hadfield, forthcoming). Whilst new private funding streams flow in the directions approved by CSR scheme organizers, the failures to implement public policies concerning the control of ENTE drinking spaces remain.

Presuming that a market-driven neo-liberal mode of governance for the night-time city will remain, hopes for the transformation of nightlife appear to rest on a re-development-led approach which encourages new economic players drawn from the retail and cultural sectors, the performing arts, dining/cuisine, cinema and health and lifestyle services. Alcohol retailers must inevitably play some role in ENTE governance, however, public policies, primarily those of city governments, are required to nudge existing businesses in the direction of difficult and transformative re-investments. This assumes, of course, that entrepreneurs can identify new 'markets' (potentially new audiences) for such changes, whilst resisting the temptation to exploit existing drink-led opportunities such as 'branded' student nights (see Hubbard, 2013). The co-operation of investors, within a free market, will be voluntary.

Our hope in this article is to demonstrate why urban studies research on ENTE security governance must focus on the nuances of policy implementation if it is to meaningfully engage with real world issues and help guide thought on more enlightened futures for the night-time city. To equate policy action with policy implementation, for example, would be to swallow the pill of official discourse. The need for 'culture change' with regard to the alco-centric focus of the ENTE in British towns and cities is a familiar trope within academic discourse, including that of the research that informed Purple Flag. The Civic Trust and their advisors proposed that museums, libraries and other such public institutions might open later in order to counter the commercial, alco-centric nature of the ENTE (Civic Trust 2006, Davies, 2010). However, since that time, an extended outsourcing of control to major drinks companies and alcohol retailers has created, we believe, further obstacles to the effecting of genuine social and economic diversification, increased accessibility and cultural transformation in towns and cities after dark. In nurturing any such latent demand for more diversified ENTES, the British appear to have lost sight of the essential contribution of effective alcohol law enforcement in providing the base line supportive conditions for such progress.

Conflict of Interest

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